

**MINUTES OF THE MEEETING
OF THE BOARD OF DIRECTORS OF
THE DEPARTMENT OF WATERWORKS**

Date: May 29, 2003

The Board of Directors (the "Board") of the Department of Waterworks (the "Department") met at 200 East Washington Street, Indianapolis, Indiana in the Public Assembly Room of the City-County Building. The following Board members were in attendance: Samuel L. Odle, John Mutz, S. Michael Hudson, Barbara Coughenour, Jack Bayt and Barbara Howard.

I. Approval of Minutes of the Meeting of April 24, 2003

Chairperson Odle asked for motions for the approval of the minutes of the meeting of the Board as of April 24, 2003 (the "Minutes") as set forth in Exhibit A, attached hereto and made a part hereof. A motion was made and seconded for approval of the Minutes. Ms. Howard asked the Minutes to be revised to reflect her name at the bottom of page 1 and strike that of "Coughenour". The Board unanimously approved the Minutes as revised.

II. Approval of February 26, 2003 of the Memorandum of the Executive Session of Board

Chairperson Odle asked for motions to approve the memorandum of the executive session of the Board held on February 26, 2003 (the "Memorandum"), as set forth in Exhibit B, attached hereto and made a part hereof. Kobi M. Wright, Special Assistant Corporation Counsel, stated that the Memorandum is before the Board for approval at this date because today is the first Board meeting at which a majority of the attendees of the executive session are present to approve the Memorandum. A motion was made and seconded to approve the Memorandum. The Board unanimously approved the Memorandum.

III. Report of the Financial Manager of the Department

Robert Erney, Financial Manager of the Department, presented the financial report of the Department (the "Financial Report") as set forth in Exhibit C, attached hereto and made a party hereof.

Chairperson Odle asked if the management fee incurs all of the operating expenses of USFilter for the month. Mr. Erney responded that this represents all of the monies paid to USFilter for its fixed fee for operations.

Chairperson Odle asked if the service connections figure is net of disconnections. Mr. Erney responded affirmatively.

Ms. Coughenour asked why commercial connections went down for the month. Mr. Erney responded that it is not out of the ordinary for that to occur given bankruptcies and failed start up businesses that disconnect. He noted that overall connections increased for the month.

Chairperson Odle emphasized that as the Department grows, funds that are remitted to the Department are reinvested back into the system to maintain its integrity for the benefit of Central Indiana residents.

IV. Report of USFilter Indianapolis Water, LLC (“USFIW”)

James Keene of USFIW submitted USFIW’s monthly report (“USFIW Report”) as set forth in Exhibit D, attached hereto and made a part hereof.

Mr. Keene at the request of Chairperson Odle made the following remarks to address public comments made at the Board’s April 2003 meeting:

- Comment made that USFIW’s reservoir study and implementation plan had not been made public as of April 24, 2003. It had not been made public and was not due per the management agreement with the Department until April 30, 2003. The nutrient study and plan were delivered to the Department by April 30, 2003.
- Comment made why USFIW’s nutrient plan is not moving ahead. USFIW agrees that collaboration with the Board, public and others are necessary to address nutrient concerns and USFIW is eager to collaborate with such groups and believes its collaboration with IUPUI to procure the nutrient study is a step towards that direction. USFIW is eager to participate with the Technical Advisory Group in such efforts.
- Comments as to action regarding conservation. USFIW agrees more can be done to address water conservation and the 2004 capital plan addresses conservation and expects the Board will review that plan in coming months.
- Comments as to why USFIW does not desire to work with others outside USFIW. Mr. Keene responded that USFIW works with regulatory agencies and the Citizens Advisory Group (“CAG”) which USFIW proposed. The meetings are public. USFIW per the management agreement has submitted names to the Department for members of the Technical Advisory Group (“TAG”). TAG will be a forum for water quality, environmental stewardship and water management. USFIW has recommended names for TAG including Clark Kahlo and Glenn Pratt who are here today and are considering such appointments.
- Comments were asked if USFIW has submitted its top five issues to CAG. USFIW has done so and they are: taste and odor, customer service, customer complaints, communications with customers and community involvement.

- Comments made that 13 positions were added and not posted and all were temporary employees. USFIW has added employees at call center. Union officials were notified prior to filling the positions. The manner in which USFIW staffed these positions is the same as was done by the Indianapolis Water Company (“IWC”). USFIW’s commitment to union call center employees is to address how many temporary employees will become permanent employees in six months. USFIW is not sure of any controversy therefore that would necessitate the comments made by a union officer as was done last month.
- Comments that temporary employees are in union designated positions within the office and clerical workforce. Mr. Keene stated this is an alarming suggestion particularly when made by union officer in a public forum. No non-union employees are working in certified positions nor will we. If the union officer who made such comments is aware of any non-union employee working in a certified position, he should make that specific circumstance aware to USFIW human resources
- Comments were made as to whether there is a staffing requirement in the management agreement. USFIW stated there is none and added that USFIW has added employees to the workforce. USFIW added that the parking lot at the waterworks headquarters has been expanded to accommodate these new employees. USFIW in Indianapolis has added 25 new employees at its high water purification facility. USFIW has invested over \$3.5 million outside the parameters of the management agreement to bring these jobs to Indianapolis.
- Comments were made that USFIW employees have lost \$9,078 per year in benefits. Mr. Keene stated he is not aware of any basis of these figures in a qualified study and that these figures came from the attorney suing USFIW, the city of Indianapolis and the Department. The city’s bidding requirements stated that the bidder had to supply benefits same benefits for non union personnel that was provided to the bidding company’s similarly situated personnel. Keene stated USFIW’s bid was reviewed in a public process by both the city county council and the Board. USFIW has made compensation beyond that required in the management agreement. USFIW has paid \$4 million and \$2 million to employees for accumulated sick leave and vacation pay respectively. Employees received an average of greater than \$26,000 per employee and some individuals receiving payments greater than \$93,000 per employee.

Mr. Keene stated that he is proud of the partnership between USFIW and the Department over the past year. He added that water quality complaints dropped from 501 in 2001 to 30 in 2002. Mr. Keene stated that the call center is now beating industry standards. Mr. Keene introduced Mike Stark, President of USFIW Services Group, the largest outsourcing group in America and the president of the Water Services Council.

Mr. Stark stated that USFilter is extremely proud to serve Central Indiana and that this project is very important to USFilter. Mr. Stark emphasized that USFilter is an open book and that if at any time USFilter can provide the Board with information contact him or any of the 1,000 USFilter employees that reside in the Indianapolis area.

Chairperson Odle congratulated Mr. Keene in its first year of operations and stated that he looks forward to moving forward.

V. Report of the Director of Operations of the Department

Carlton Curry, the Director of Contracts and Operations of the Department, presented a summary of capital projects (the "Capital Projects Summary") as set forth in Exhibit E, attached hereto and made a part hereof.

Mr. Curry stated that he intends to ask the Board in the future for approval to draw down on bonds to fund upcoming capital improvements.

Vice Chairperson Mutz asked what the annual water growth would be for the five year period of contemplated capital projections. Mr. Curry responded that a study has been commissioned and delivered by USFilter indicating that water growth would be at over 3% for the period. Mr. Curry stated he intends to demonstrate this in future presentations. He added that projections are not a sure thing given that if the area suffered a severe drought, conservation efforts would be required.

Vice Chairperson Mutz asked if 3 ½ % growth has historically been the case with IWC. Mr. Curry answered in the past the figure has been different and that demand at times was greater than water supply.

Mr. Bayt asked how long would that water amount in the Waverly wellfield last. Mr. Curry stated that the Department will likely have to develop another wellfield in the future.

Chairperson Odle asked if the Waverly wellfield is in Morgan county. Mr. Curry responded affirmatively.

Chairperson Odle asked if at the time approval of capital projects for next year will the Board have been submitted a study on the unserved communities in Marion County. Mr. Curry responded that he hopes the Board will have unserved program before this year terminates. Chairperson Odle asked if the capital plan allocates funds to these unserved areas. Mr. Curry responded affirmatively and that staff is working with the Department of Public Works to undertake pilot projects unserved areas to combine delivery of potable water with sewer installation.

Mr. Bayt asked if cash flow can support the capital expenditures expected. Mr. Erney answered the Department will likely need to draw down the amount from bonds. Mr. Bayt asked if such an expenditure of that money can be substantiated.

Mr. Erney stated his analysis would have to address whether the Department could meet its required debt service coverage ratio. He added that the Department must meet a threshold ratio of greater than 110% of the debt service. Last year the Department's ratio was 145%. He added that if the Department hits 125%, the Department must initiate the process of requesting a rate increase. He added that he does not expect the Department to get close to that level within the next year or 2.

Mr. Curry presented a nutrient study, as set forth in Exhibit F, attached hereto and made a part hereof (the "Nutrient Report"). He added that USFIW delivered this report after the Department rejected an earlier report. Mr. Curry stated that the Nutrient Report is closer to meeting the intent of the management agreement however some additional work needs to be done.

Mr. Curry presented his monthly report to the Board (the "Directors Report") as set forth in Exhibit G, attached hereto and made a part hereof.

Vice Chairperson Mutz asked if using water tower facades for logos has commercial value. Mr. Curry stated yes. Vice Chairperson Mutz suggested we should explore this and determine the precedent for such use by other utilities. Mr. Curry stated that the Department may use these towers for radio antennae as well.

Kobi M. Wright, Special Assistant Corporation Counsel, added the Department would look to its bond counsel as to the Department's ability to obtain commercial value for such use given our bond covenants.

Chairperson Odle commented that capital investments that create jobs in the community and sustain and create jobs for USFIW's workforce.

Chairperson Odle chose to address the last resolution listed on the agenda first prior to addressing the first resolution indicated on the agenda to provide for a presenter to establish technical connections necessary for his presentation.

VI. Resolution No. 7, 2003-Approval of Certain Incentive Payments to USFIW

Mr. Curry summarized the resolution. Chairperson Odle stated that the Department's Coordination Committee (Chairperson Odle, Vice Chairperson Mutz and Mr. Hudson) met with staff and USFIW representatives to discuss these incentives and it is the recommendation of the Department's Coordination Committee representatives that the resolution be adopted.

A motion was made and seconded to adopt the resolution. The Board unanimously adopted Resolution No. 7, 2003.

VII. Resolution No. 8, 2003-Resolution Approving of an Appropriation in Character 3 Funds for Legal Budget

Mr. Erney summarized the resolution. He added that he anticipates the increased appropriation to be offset by interest earnings for the year given that earnings are on pace to earn \$1.4 million for 2003 which is approximately \$1 million over previous projections.

Vice chairperson Mutz asked what events have caused the Department to amend this line item.

Mr. Wright answered that the putative class action lawsuit filed by non-union USFilter personnel and another lawsuit filed by the same attorney representing the employees, Mr. John Price, challenging the legal governance of the waterworks on behalf of three city taxpayers.

Mr. Mutz asked that this appropriation is needed for expenses not originally expected. Mr. Wright responded affirmatively.

A motion was made and seconded for the adoption of the resolution. The Board unanimously adopted the resolution.

VIII. Resolution No. 9, 2003-Approval of Professional Code of Conduct

James Strain of Sommer Barnard Ackerson, PC stated that the at the behest of the Office of Corporation Counsel and the Board's officers, his firm looked into what form a professional code of conduct should be in light of the passage of Sarbanes Oxley federal law and good business practices. Mr. Strain set forth the purposes of the resolution as set forth in Exhibit I, attached hereto and made a part hereof. Mr. Strain added that the suggested code is a living document and can change over time as needs require.

Vice Chairperson Mutz stated that the Department is a combination of the public's business and similarities to the management of a corporate entity. He asked if the proposed code addresses any conflict that can arise between the two and mentioned that he had never seen a code like this before for county or city government.

Mr. Strain responded that the Department from its inception was intended to be run as a business and that he has not seen codes similar to that proposed for a public agency but that there is no comparable public agency like this one anywhere that he is aware of. He added that he attempted to reconcile those differences as to private and public concerns by for example having communications flow through the chairperson per the proposed code.

Mr. Wright added that he concurs with Mr. Strain and added that the proposed code addresses your obligations as a public agency. He added that simply labeling a matter as

confidential may not make it so if the public access laws and other statutes do not recognize it as such. He added that the code specifically places a primacy on public disclosure laws that apply.

Vice chairperson Mutz asked if the code affects the public's right to know. Mr. Wright respond that it does not given that the code specifically states:

“The Department recognizes that it has a legal obligation to comply with all applicable laws and regulations concerning the disclosure of information to the public. In the event any policy set forth herein conflicts with any applicable law or regulation concerning disclosure of information to the public, such applicable law or regulation shall control.”

A motion was made and seconded to adopt the resolution. The Board unanimously adopted the resolution.

IX. Resolution No. 10, 2003-Approval of Board Rules For Public Comment at Meetings of the Board of Directors

Chairperson Odle and Mr. Wright summarized the resolution. Vice chairperson Mutz asked if a more complex matter arose such as the hiring of USFilter as the operator, would the Board would have the authority to enlarge the public comment period.

Chairperson Odle responded affirmatively. Mr. Wright stated that the adoption of this resolution does not eviscerate the Chairperson's authority to oversee the conduct of the meetings as set forth in Resolution No. 1, 2002.

Chairperson Odle asked to amend the resolution to state that the Board will accept communications from the public related to the utility's business.

A motion was made and seconded to adopt the resolution as amended.

Clark Kahlo interjected that he wished to speak on this agenda item. He added that other city departments provide for public comment on all agenda items. He urged the Board to modify the language of the items prior to the Board takes action on an item. Mr. Wright stated that the Chairperson has the authority to make that decision during any meeting as means to oversee the conduct of the meeting. Mr. Kahlo said he would like to see additional language memorializing his request.

Hearing no further comments, Chairperson Odle called for a vote on the resolution. The Board unanimously adopted the resolution.

Chairperson Odle underscored that the Board welcomes public comments and will consider those comments as appropriate in matters on the agenda. He added that the Board maintains the ability to amend items after they have been adopted by the Board

thus whether comments are made before or after action on a matter, those comments can have an impact on the matter.

X. Resolution No. 11, 2003-Approval of the Transfer of Real Estate to BRS, LP

Mr. Wright summarized the resolution. Vice chairperson Mutz asked who is the general partner for BRS, LP. Mr. Wright responded Dr. Cory SerVaas.

Mr. Bayt asked how this property only costs \$3500. He added that Mr. Curry had stated that in prior meetings that IUPUI may want to acquire 1220 Waterway real estate and how the currently proposed transfer would affect that. Mr. Curry responded that he did not expect this transfer to have an affect on a transfer with IUPUI. He added IUPUI already has an easement under this land and that the current land has no use or significant value beyond what the Department already has.

Mr. Bayt asked how much did legal opinions cost to conduct this proposed sale. Mr. Wright deferred to Mr. Erney as to the cost of the appraisals. Mr. Erney responded that he believes it was \$12, 500. Chairperson Odle asked wouldn't that amount be placed in the value of the transaction.

Mr. Wright stated that the offer need not be accepted and has only been received from BRS, LP. Chairperson Odle asked that we take the matter under advisement before moving forward. Mr. Bayt added that in the future such a matter should be discussed prior to presenting it for approval.

Vice chairperson Mutz asked if counsel to BRS, LP, Mr. Gene Leeuw had any comments. Chairperson Odle recognized Mr. Leeuw. Mr. Leeuw stated that he was unaware of the cost of the appraisals. He added that both appraisals state the best use of the property is that planned by BRS, LP. He added that city legal correctly advised him that the property could not simply be sold but statutory procedures had to be followed to conduct appraisals.

Mr. Wright affirmed that fact.

Ms. Coughenour asked why the amount of the appraisals was at the price stated.

Mr. Erney stated that he had not received the actual appraisals. Mr. Wright stated he believed the stated price includes other appraisals.

Mr. Bayt asked that in the future a mechanism should be put in place to review potential land transactions prior to significant expense.

Mr. Wright stated he would undertake such measures.

XI. Other Business

Glenn Pratt stated that the Nutrient Report is inadequate and that in discussions with Mr. Keene, he believes USFIW is now interested in addressing his concerns however it should be a matter of months not a matter of years to address these matters.

Mr. Pratt also stated that the agreements with the Indianapolis Water Company concerning water treatments that USFilter no longer has. He added that USFIW may not add copper to its treatments which causes fishkill. Mr. Pratt stated that the management agreement places severe pressure on USFIW to treat taste and odor matters which could cause fishkills. Mr. Pratt stated the USFIW has said it would come after him personally if it loses incentive payments because of his appeals.

Vice Chairperson Mutz asked if USFIW has entered any product in the water that is prohibited by law. Mr. Pratt stated no but that over the years thirteen tons of copper into Eagle Creek reservoir. He also underscored that the Department should not maximize this taste and odor treatments.

Ms. Coughenour asked Mr. Pratt that he send his technical written matters be sent to the Board ahead of time. Mr. Bayt asked USFIW to respond to these issues.

Mr. Pratt affirmed that concerning the permits, these previous conditions have been previously submitted by the Indianapolis Water Company.

Ms. Coughenour stated that previously there had been an odor and taste problem under IWC and this past year there wasn't thus why is it that we had those problems under the era when IWC was operating per the agreements it entered into with you. Mr. Pratt answered that weather conditions influenced this and USFIW's earlier application of chemicals. He added that the current permits do not adequately regulate USFIW's compliance.

Mr. Kahlo stated that information should be provide ahead of time particularly to resolutions provided ahead of the meeting. He added that the fourth of "Whereas" as to resolution number 8 should state the best interests of the public should be considered as well. He implored the Board not to view the utility as solely an engine for economic growth.

Tom Plummer asked that the Board not act on the sale of any land to BRS, LP until the lawsuit challenging the utility's governance is settled. He added that if the Department wishes to dispose the property, then give it IUPUI.

He added that the \$4 million paid to employees was for sick time and vacation time owed to the employees.

Chairperson Odle seeing no additional comments adjourned the meeting at 7:30 pm.

Approved this 26th day of June 2003.

Samuel L. Odle, Chairperson

Attest:

S. Michael Hudson,
Secretary-Treasurer